

MCDONALD’S CORPORATION,	:	
	:	
Plaintiff,	:	No. 1:19-cv-06471-DLI-ST
	:	
v.	:	DECLARATION OF DENISE
	:	ALVAREZ IN SUPPORT OF
VANDERBILT ATLANTIC HOLDINGS	:	PLAINTIFF’S MOTION <i>IN LIMINE</i>
LLC,	:	TO PRECLUDE THE ADMISSION OF
	:	<u>CERTAIN EMAILS INTO EVIDENCE</u>
Defendant.	:	

1. I am a partner at the law firm of Pashman Stein Walder Hayden, P.C., attorneys for Plaintiff McDonald's Corporation ("McDonald's") in this matter.

3. Counsel for the parties appeared before the Court for a pretrial conference on January 15, 2025. Attached as **Exhibit 1** is a true and correct copy of the transcript of the pretrial conference held on January 15, 2025.

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5. Attached as **Exhibit 2** is a true and correct copy of an email string between Morris Missry and Michael Meyer, dated May 20, 2019, forwarding an email from Sharon Locatell on the same date, bates stamped MCD007594-95 and identified as Exhibit KK on Vanderbilt's trial exhibit list.

6. Attached as **Exhibit 3** is a true and correct copy of an email string between Morris Missry and Michael Meyer, dated from July 7, 2019 through July 10, 2019, bates stamped MCD007715-18 and identified as Exhibit AAA on Vanderbilt's trial exhibit list.

7. Attached as **Exhibit 4** is a true and correct copy of an email string between Morris Missry and Michael Meyer, dated from July 3, 2019 through July 22, 2019, bates stamped MCD007704-08 and identified as Exhibit BBB on Vanderbilt's trial exhibit list.

8. Attached as **Exhibit 5** is a true and correct copy of an email from Morris Missry to Michael Meyer, dated September 24, 2019, bates stamped MCD007667 and identified as Exhibit OOO on Vanderbilt's trial exhibit list.

9. Attached as **Exhibit 6** is a true and correct copy of an email string between counsel for the parties, dated from January 17, 2025 through January 22, 2025.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 5, 2025

/s/ Denise Alvarez
Denise Alvarez

EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -	-X	
MCDONALD'S CORPORATION	:	19-CV-6471(DLI)
	:	
Plaintiffs,	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	
VANDERBILT ATLANTIC HOLDINGS, LLC,	:	January 15, 2025
	:	11:00 a.m.
	:	
Defendant.	:	
- - - - -	-X	

TRANSCRIPT OF CIVIL CAUSE FOR PRETRIAL CONFERENCE
BEFORE THE HONORABLE DORA L. IRIZARRY
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Plaintiff: PASHMAN STEIN WALDER HAYDEN P.C.
Attorneys for the Plaintiff -
McDonald's Corporation
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Suite 200
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BY: DENISE ALVAREZ, ESQ.
BRENDAN M. WALSH, ESQ.

For the Defendant: AKERMAN, LLP
Attorneys for the Defendant -
Vanderbilt Atlantic Holdings, LLC,
1251 Avenue of the Americas
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BY: JOSHUA D. BERNSTEIN, ESQ.
BENJAMIN REID JOELSON, ESQ.
TARA L. RAGHAVAN, ESQ.

Court Reporter: Anthony D. Frisolone, FAPR, RDR, CRR, CRI
Official Court Reporter

Proceedings recorded by computerized stenography.
Transcript produced by Computer-aided Transcription.

1 (In open court.)

2 COURTROOM DEPUTY: Civil cause for pretrial
3 conference Docket No. 19-CV-6471 McDonald's Corporation
4 versus Vanderbilt Atlantic Holdings.

5 MS. ALVAREZ: Denise Alvarez, Pashman Stein Walder
6 Hayden, for McDonald's Corporation.

7 THE COURT: Good morning.

8 MR. WALSH: Brendan Walsh also of Pashman, Stein,
9 Walter, Hayden on behalf of McDonald's Corporation.

10 MR. BERNSTEIN: Joshua Bernstein from Akerman on
11 behalf of the defendant Vanderbilt Atlantic Holdings, LLC.

12 MR. JOELSON: Benjamin Joelson also from Akerman
13 for defendant Vanderbilt Atlantic Holdings.

14 MS. RAGHAVAN: Tara Raghavan from Akerman also on
15 behalf of Vanderbilt Atlantic Holdings.

16 THE COURT: Good morning to all of you. Again
17 happy new year to everyone.

18 And I just want to acknowledge receipt of a few
19 documents that we're going to be talking about today and
20 that is -- there are four documents, actually.

21 There were two letters that were filed by
22 plaintiff jointly. There was one letter that was filed
23 jointly on behalf of the parties which was a status report
24 letter that was filed on January 7th of this year, Docket
25 Entry Number 102. There was a plaintiff's letter noting

1 continuing issues in the case, also filed on January 7th;
2 that's Docket Entry 101.

3 And the first letter noted that the parties were
4 unable to resolve the case by any kind of either agreeing to
5 mediation or otherwise, and requesting that the case proceed
6 to trial and noting that the parties intended to file an
7 amended joint pretrial order.

8 There is defendant's letter of January 10th
9 discussing their positions with respect to some of the
10 outstanding issues. The Court also did review the amended
11 joint civil pretrial order. And I would note that it really
12 would have been far more convenient for the Court if the
13 parties had red lined what was different in the amended
14 joint pretrial order. I know I did not specifically ask for
15 it but it might have been nice.

16 MS. ALVAREZ: I actually have a red line, your
17 Honor.

18 THE COURT: It's too late. I've already done the
19 work and my law clerk has done the work. I appreciate the
20 offer.

21 So, at this juncture, first of all, let me just
22 say I'm really not pleased with respect to the fact that so
23 much of what's being argued about here really would have
24 been subject for inclusion in the motions in limine for
25 which I gave a schedule last year which the parties had

1 plenty of time to brief, and to bring it to the Court's
2 attention. You would have had an opinion by me already and
3 we could have moved forward with the trial a whole lot
4 sooner. And for the life of me, I have no idea why it is
5 that that was not done.

6 I'm also not pleased, and I had high hopes,
7 besides not being pleased, I'm very disappointed because I
8 had some very high hopes that given the entry of new counsel
9 for defendants, and given the tone of the last pretrial
10 conference that we had here in the middle of November, that
11 there would have been far more agreement among the parties,
12 between the parties, with respect to some of the issues and
13 that I would not see continuation of what's been happening
14 with this case since its inception, this tit-for-tat
15 approach, shall we say, with respect to responses to one
16 another. That's going to end. I don't have time for that.
17 That has no place in this profession. The law is not an
18 industry, it is a profession as our Honored Judge Leo
19 Glasser insists. He must know something after 100 years of
20 life and still working. And that's what I expect when I see
21 lawyers in front of me. Petty stuff goes out the window. I
22 have no time for that; I have no patience for that. Let's
23 get down to brass tacks and do it professionally.

24 Now, with respect to the 29 exhibits or so that
25 the defendant added for the first time in the amended joint

1 pretrial order, which, first of all, I had no clue from the
2 joint status report whether or not such was necessary.

3 And secondly, there was very little time here with
4 respect to the filing of an amended joint pretrial order
5 given the proximity of the trial date and given that we had
6 this conference here today.

7 Moreover, the defendants had these documents all
8 along. There is no claim that they were just provided in
9 discovery. And plaintiff complains that these were ratted
10 added at the last minute on the eve of filing the joint
11 pretrial order, but plaintiff also added two exhibits a few
12 days before that, also fairly close to the date. Well, I
13 hadn't even set a date for the filing of the amended joint
14 pretrial order and had I not done that there probably would
15 not have been anything filed before today.

16 So both sides are precluded from using those
17 exhibits that were added at the last minute whether it was
18 January 7th or 8th and January 10th. No good cause has been
19 shown as to why these exhibits could not have been added in
20 the original joint pretrial order. None whatsoever. Both
21 sides had these documents.

22 The other thing is that, especially given the
23 discussions that apparently the parties had -- the other
24 thing, I have to say this, because we had a conference
25 November 14th. Granted, Thanksgiving comes along but the

1 parties didn't meet until December 11th; and yet, I don't
2 get the status letter until January 7th with all of these
3 issues still outstanding. I don't know why I couldn't have
4 been given a status report earlier than that; that could
5 have been addressed earlier.

6 The other thing is that with respect to the
7 exhibits, the e-mails especially, that the defense is
8 seeking to introduce either for admission of -- by silence
9 or something else, not clear to me what that something else
10 is, plaintiff has objected to those e-mails as hearsay.
11 There is no hearsay exception for these particular e-mails.
12 If anything, perhaps as an admission by silence, it might be
13 construed as an admission by a party opponent; however, none
14 of the exhibits, in particular, those that have been
15 objected to, have some kind of indication as to what the
16 purpose of those exhibits documents are.

17 I already had this discussion with you all in
18 November. Obviously, for impeachment, there is a whole lot
19 of leeway, you could use a napkin, and if it's something
20 written on a napkin for impeachment purposes, to be a
21 little bit extreme about it, that's one thing. But to
22 actually seek to introduce into evidence is another thing
23 altogether. And there's no notation as to what the theory
24 is under which the particular exhibit is and neither
25 plaintiff nor defense did that. So that falls on both

1 sides.

2 But, in particular, with respect to these
3 contested e-mails, it would have been helpful to know what
4 the theory is. And, I am sorry, but I am not going to sit
5 in the middle of trial to stop everything to start reading
6 e-mails. I don't know how long these e-mails are and to
7 then start doing research and stop everything to figure out
8 whether they are admissible.

9 I can't rule on this in a vacuum which is part of
10 the reason why I say that this would have been the perfect
11 subject for a motion in limine: Attach the darn e-mails as
12 an exhibit so that I can look at them and weigh them and
13 weigh the parties' arguments against the backdrop of the law
14 cited by the parties and any other law that the Court might
15 find on its own.

16 So that being the case, I am going to have the
17 parties brief the issue as another set of motions in limine,
18 not because I enjoy ruling on motions but I think it is a
19 more effective use of time. And we'll talk about scheduling
20 that towards the end.

21 The same is a true for one of the documents or set
22 of documents that the parties have no agreement on. This is
23 plaintiff's intent to use or request to use pleadings or to
24 admit pleadings as evidence, I should say.

25 In the first place, I already ruled on that the

1 last time. And to the extent that the plaintiff is asking
2 for reconsideration of that ruling, then make the proper
3 motion for reconsideration following the proper standards.
4 And, in that regard, it is not clear to me, number one, what
5 are the facts that are different in the pleadings, and
6 exactly what is it that plaintiff objects about, that the
7 defense objects? Is it that the plaintiff -- what is it
8 that the plaintiffs are seeking to admit these pleadings
9 for? Change of facts, recitation of facts, or change of
10 theory? The defense is entitled to change their theory or
11 to argue alternate theories and that is not a basis for
12 admitting pleadings.

13 If it's a change in facts, then maybe that's a
14 possibility. But, again, not necessarily. That doesn't
15 necessarily make the pleadings automatically admissible,
16 especially when we're not talking about verified complaints.
17 A point made by the defense in their responsive letter.

18 So with respect to the pleadings, as part of the
19 motion in limine, plaintiff will need to set forth why the
20 Court should reconsider, in light of the proper standard for
21 a motion for reconsideration, and elaborate on what is it
22 about the pleadings. I mean, at this point, we're right
23 before trial, there's nothing to hold close to the vest
24 here.

25 And to the extent that the defenses are, going

1 back to the e-mails for one second, but to the extent that
2 the defense has argued that this is a premature argument
3 made by plaintiff because, correctly so, correctly argued,
4 obviously, context matters, right? But we're talking about
5 a document, an e-mail exchange, a conversation, essentially,
6 in writing between or among some individuals. So why isn't
7 the context readily apparent on the document which is
8 another reason why this would have been properly done in a
9 motion in limine.

10 With respect to the rezoning documents that
11 plaintiff seeks to introduce. We had some discussion about
12 that the last time. Remind me again the FMV process, the
13 fair market value evaluation, process that occurred between
14 2017 and 2019, am I right, or 2018?

15 MR. WALSH: They started having discussions in
16 sort of early 2018 and then the process, formal process, was
17 2019.

18 THE COURT: Okay. Part of the defense arguments
19 in opposing the admission of these documents into evidence
20 is that that you have provided some additional stipulations
21 of fact with respect to the rezoning which covers, let see,
22 seven through ten, I guess, relate to rezoning?

23 MR. WALSH: Your Honor, from my perspective, seven
24 absolutely relates to the rezoning process. The others
25 relate to the --

1 THE COURT: The FMV process?

2 MR. WALSH: Well, if you recall, there was a
3 motion in limine about pre-April 2019 appraisals and that's
4 what these other stipulations -- you know, so I jotted
5 down -- I got 7 and 24 through 28 relate to rezoning.

6 THE COURT: Yes. And that's what I have as well.
7 24 through 28.

8 MR. WALSH: Right. Which all postdate the FMV
9 process with one exception that I'm happy to talk about.
10 All of the documents at issue are during the process.

11 THE COURT: Okay. Given the stipulations, why is
12 it necessary to introduce documents to that effect?

13 MR. WALSH: Well, your Honor --

14 THE COURT: What do the documents add that the
15 stipulations do not on this issue?

16 MR. WALSH: So it's very important, your Honor.

17 What you said in your decision on the motion in
18 limine is that we must, that plaintiff, I'm quoting, "Must
19 show intent to harm the other contracted party. Alternative
20 or reckless disregard of the other contracting party's
21 rights under the contract, accordingly, intent is
22 irrelevant."

23 In the summary judgment decision, you said the "Of
24 relevance, here plaintiff argues, and defendant disputes,
25 that the defendant had motivation to retain the high FMV

1 estimate that Tener had reached originally. This alleged
2 motivation bears on whether defendant undertook the ORA
3 dispute rulings process in good faith. According to
4 plaintiff, defendant imposed an unfairly high rent on
5 plaintiff with the hope that plaintiff would vacate the
6 property so defendant could execute its plan of quickly
7 redeveloping the home high-rise mixed-use development which
8 it could not do if plaintiff remained a tenant on the
9 property.

10 So, from our perspective, not only are these
11 documents relevant, these documents, which I can discuss,
12 they're among the most important documents in the case
13 because they bear directly on their intent and motivation
14 during the process, not after the process.

15 So they've stipulated that they went through this
16 rezoning process and that the rezoning was completed. But
17 what the documents show, among other things, is that when
18 Vanderbilt first sent its letter of intent, it's called a
19 letter of intent, what better document to show intent, they
20 talk about demolishing the McDonald's restaurant. They talk
21 about there they tout the rezoning experience.

22 Then what the evidence will show during trial is
23 that McDonalds and Vanderbilt had their first conversations
24 in January and February and McDonald's made clear to
25 Vanderbilt that it intended to stay at the property long

1 term through 2039. What the documents show is right after
2 that conversation, Vanderbilt starts generating
3 architectural drawings of a 17- or 18-story building on this
4 property.

5 It also shows that they started at that point
6 immediately having meetings with the Department of City
7 Planning. In October of 2018, Vanderbilt prepared what's --
8 and submitted what's called a pre-application statement to
9 the Department of City Planning. And one of the items on
10 that -- in that form meets to discuss when that proposed
11 redevelopment is going to occur.

12 So this is in October of 2018, right as the
13 parties are about to start the process, Vanderbilt submits
14 this document saying that they anticipated demolition of the
15 McDonald's restaurant and completion of the new high-rise
16 mixed-use building during 2022. This is after McDonald's
17 had told them earlier in the year that they planned to be
18 there through 2039. Then, Vanderbilt met with the
19 Department of City Planning on November 13, 2018, and the
20 meeting notes from that reflect that DCP told Vanderbilt
21 that they needed to reidentify, quote, "An appropriate
22 project build year." 15 days after that meeting,
23 November 28th of 2018, Vanderbilt prepared another document
24 stating that, quote, "It is it is expected that the proposed
25 development would be constructed over an, approximately, 18-

1 to 22-month period following approval with completion and
2 occupancy expected to occur in 2022. This build year was
3 determined in consideration of the amount of time necessary
4 for the development site to be reasonably redeveloped."

5 So Vanderbilt, at that point, was representing to
6 the City that not only were they going to hopefully get the
7 rezoning done, but that McDonald's would be demolished and
8 the building would be done in 2022.

9 And then I mentioned that there was one document
10 among, and it's only eight documents, but there is one
11 document that postdates that, and that's a document that was
12 submitted in February of 2021 that was submitted as part of
13 the formal rezoning where Vanderbilt had essentially the
14 same timeline except they walked it back a year so that they
15 said they expect a completion date of 2023 instead. And we
16 think that's important because not only is that after this
17 litigation has been filed, but to the extent that they, you
18 know, try to walk back and say, well, at that time, we
19 didn't know what was going to happen. And, you know, to the
20 extent they try to walk it back, they later submitted
21 documents later on that reaffirmed that and only pushed the
22 deadline back a year.

23 A couple of other things that are interesting and
24 important about the documents.

25 The letter of intent, we think that one of -- it

1 has a separate relevance besides the redevelopment and that
2 we expect that Vanderbilt is going to argue that their
3 decision not to give the Vanderbilt lease to their
4 appraiser, even though he asked for it multiple times, even
5 though it showed that Vanderbilt would be paying essentially
6 the same rent that McDonald's appraiser had concluded to go
7 McDonald's left the property.

8 They're going to argue, we believe, that it was a
9 related party transaction. And this formal letter of intent
10 that was submitted, you know, by Vanderbilt's principals to
11 MMC we believe undercuts any suggestion that this was a
12 related party transaction such that the appraiser could just
13 ignore it. So we intend to use it for that separate purpose
14 as well.

15 And then, just one last thing, is there is one
16 document that we identified in our letter. It was old
17 No. 13, it's on the new PT0; it's No. 8. It's actually a
18 pre-April 29th valuation document.

19 THE COURT: It's Exhibit No. 8?

20 MR. WALSH: Exhibit No. 8. It was a valuation
21 prepared, I believe, it was either March or April of 2018 by
22 a company called Auterra CRG and we believe -- and it's
23 titled "Valuation." It's got comps, it's got a calculation
24 of the value, and we believe that it's actually covered by
25 the in limine decision and it's not. We had improperly

1 identified it as a redevelopment document but we believe
2 it's covered by the Court's in limine decision.

3 So just, you know -- and when you look at, when
4 you look at the stipulations, and to be clear, we worked
5 very hard, we prepared stipulations on all of these facts,
6 they refused to agree to them. The only ones that you see
7 here were the ones they agreed to for the post-fair market
8 value process they don't say much; for example, No. 24 in
9 June 2020, Vanderbilt filed an environmental assessment
10 statement to the ULURP process. In fact, they stated,
11 environmental assessment statement is the fact that it's
12 significant. The fact that's significant is that they
13 identified a build year of 2023 showing demolition
14 occurring, you know, years earlier. The only one that
15 predates is No. 7, and that was when they talked about they
16 stipulated that they hired a rezoning counsel and a lobbying
17 group in January of 2018. And when they agreed to that
18 stipulation, we took off our document.

19 And so, it started as ten documents. We removed
20 one of them when we got the stipulation. They wouldn't
21 agree to stipulations on any of the other facts, and so,
22 that's kind of where we landed. The stipulations don't get
23 to the intent in the way, and the motivation, in the way
24 that the document plainly demonstrate bad faith during the
25 process and leading up to the process.

1 THE COURT: I'll hear from defense counsel on that
2 issue.

3 MR. BERNSTEIN: So first, your Honor, I just want
4 to start by acknowledging what the Court said at the outset
5 of this conference on behalf of my client and my firm
6 apologizing for the Court's impression of the conduct
7 between the parties. It was certainly not my or my firm's
8 or, more importantly, my client's intent to either get into
9 a tit for tat back and forth with the other side or to
10 frustrate and create more work for the Court. And so, we
11 apologize for that, your Honor.

12 Second, Mr. Joelson is going to handle the issues
13 about the rezoning documents. I just want to point out one
14 issue out if that's okay before Mr. Joelson takes over.

15 THE COURT: Sure.

16 MR. BERNSTEIN: One of the issues that we have is
17 that there is not a witness who can testify who is on either
18 side's witness list to testify about the meaning of these
19 documents, what's something like a build year in an
20 environmental impact statement means, how it's developed,
21 and the involvement of somebody like the principals of
22 Vanderbilt Atlantic in a typical rezoning process. I can
23 speak to that from my general real estate and land use
24 background and can tell the Court --

25 THE COURT: See, now that's not the point here,

1 okay? Whether or not it's a protracted process or whatever
2 it is, the issue is whether or not the defendants, in fact,
3 in good faith engaged in the fair market value evaluation
4 process given a lease where the tenant, here plaintiff, had
5 already expressed an intention to continue the lease moving
6 forward many years after this proposed rezoning, okay?

7 So I agree with the defense that, you know,
8 certainly, the Court does not want to get into a side issue
9 concerning rezoning, but those particular facts that you're
10 pointing to really do not go to the heart of the issue with
11 respect to intent.

12 And the other thing, this is a bench trial; this
13 is not a jury trial. I'm more than capable of, number one,
14 stopping the lawyers if I think you're going too deep into
15 the weeds on this issue.

16 And secondly, and most importantly, to be able to
17 do the surgery necessary to weed out, to cut out what's not
18 relevant. So I'm going to allow these documents to come in
19 and, obviously, counsel will be able to make their arguments
20 as they see fit.

21 Forgive me for one second I am reviewing my notes
22 to make sure that there is...

23 I did think all the issues that I have had based
24 on what's been raised now. So let me give you a schedule
25 for the motion in limine. This is going to mean that we're

1 going to have to push back the trial, and unfortunately,
2 we'll talk about setting a new trial date. But first, let's
3 set the motion in limine schedule.

4 MR. BERNSTEIN: Before we do that, your Honor, may
5 I raise an issue?

6 THE COURT: Yes.

7 MR. BERNSTEIN: I would like, your Honor, to raise
8 an issue with the new documents on the exhibit list that I
9 understand your Honor has precluded from coming into
10 evidence.

11 THE COURT: Correct.

12 MR. BERNSTEIN: I would just like to address that
13 because it was not our intent to put those documents into
14 evidence necessarily. What they were were potential
15 impeachment documents that if we prepared.

16 THE COURT: There is no excuse for not putting
17 those in the original joint pretrial order even if that was
18 your intention. The same thing for plaintiff, for the two
19 different exhibits that were added. The parties had these
20 exhibits.

21 MR. BERNSTEIN: Some of them, your Honor, some of
22 them are prior testimony from other cases.

23 THE COURT: Which have no relevance. How does it
24 have relevance to this particular plaintiff?

25 MR. BERNSTEIN: Because there are, depending on

1 what the answers to the questions are, right, we're not
2 asking about other properties, but some of the case involves
3 appraisal methodology as the plaintiff has framed it and
4 there is prior testimony.

5 THE COURT: I'm not going to go into that now.
6 You talk about getting on a sidetrack, appraisal methodology
7 used on some other project? That's not relevant here, no.
8 I only care about the appraisal methodology used here. And,
9 by the way, I have no interest of seeing a textbook because
10 I am not qualified to know whether that textbook, in fact,
11 is the gold standard or whether or even to be able to
12 interpret what it says. I'm not an accountant; I'm not an
13 appraiser. The experts will be able to testify as to their
14 methods that they used. What is the gold standard in
15 everything else, that's what you bring the experts for.

16 So let's set a schedule then. So why don't we
17 have a simultaneous schedule, if you will; right? So an
18 opening brief by the defense with respect to the e-mails,
19 okay? And an opening brief with respect to plaintiff's
20 request concerning the pleadings. The pleadings. The
21 inconsistent pleadings.

22 MR. BERNSTEIN: I only raise this because I was
23 thinking about as motions in limine so shouldn't it be
24 flipped? We make a motion about the pleadings and they make
25 a motion?

1 THE COURT: I'm sorry, yes. Thank you. I stand
2 corrected.

3 Thank you so much.

4 MR. BERNSTEIN: No problem.

5 THE COURT: Correct. Okay.

6 So, for an opening brief, how is February 5th?
7 That's three weeks.

8 MR. BERNSTEIN: That's fine with us.

9 THE COURT: Is that good for plaintiff?

10 MR. WALSH: Yes, Your Honor.

11 THE COURT: And is three weeks good for a
12 response? That would bring us to February 26th. Yes,
13 February 26th.

14 MR. BERNSTEIN: More than enough time.

15 MR. WALSH: That works for us, your Honor.

16 THE COURT: I'm taking into account there's
17 President's Week in between there and I know folks have kids
18 and stuff and it's always a headache week.

19 MS. ALVAREZ: Thank you.

20 THE COURT: So 2/26 for response. And is three
21 weeks good for a reply?

22 MR. BERNSTEIN: Fine with us.

23 THE COURT: Is that good for everybody?

24 MS. ALVAREZ: Yes.

25 MR. WALSH: Yes.

1 THE COURT: So how about March 19th? Are the
2 parties available for an a pretrial conference then on
3 April 23rd? I have the whole day free so you can tell me
4 what's a good time for you.

5 MR. WALSH: Your Honor, I had my phone off so I'm
6 turning it on. Remind me, do you recall or can you see when
7 does Easter fall I know that I'm away?

8 COURTROOM DEPUTY: It's the 22nd.

9 THE COURT: When is it?

10 COURTROOM DEPUTY: April 22nd.

11 THE COURT: Oh, April.

12 COURTROOM DEPUTY: Excuse me, 20th. April 20th.
13 Sunday, April 20th is Easter.

14 MR. WALSH: I'll be back by then. I'll be gone
15 before that.

16 THE COURT: Yes, the week before Easter would not
17 be good for the Court either, plus it's tax week.

18 Is the 23rd then good for everybody?

19 MR. BERNSTEIN: Yes.

20 MR. WALSH: Yes.

21 THE COURT: Does Passover fall around that time,
22 too?

23 COURTROOM DEPUTY: Passover will be over.

24 THE COURT: All right. So the 23rd and I have the
25 whole day open so what's a good time for you all. You have

1 first.

2 MR. BERNSTEIN: I would say 10:00 a.m.

3 MR. WALSH: 10:00 or 11:00.

4 THE COURT: So 4/23. Now, we could set a trial
5 date now and reserve the time if you like. I'm looking at
6 May.

7 MR. WALSH: Your Honor, if we could talk, and I
8 guess our client, I just know that they've got, when we're
9 trying to get schedules the last time around there was a lot
10 of unavailability and we don't have all that updated
11 unavailability right now.

12 THE COURT: All right. So.

13 MR. WALSH: Maybe if you could give us windows and
14 we could submit a letter where we could worked with
15 Vanderbilt's counsel, I'm just not sure.

16 MR. BERNSTEIN: We will make ourselves available
17 at any time the Court is available.

18 MR. WALSH: I think for us May works. I'm not
19 sure about our witnesses, the experts, client
20 representatives.

21 THE COURT: So right now, I'm looking at -- you
22 wanted how many days, again seven?

23 MR. WALSH: Six.

24 THE COURT: Six days. And I can't meet on Fridays
25 because I have criminal matters. Although, let's see. So

1 the week of May 5th, the Court is available the whole week.
2 The week of -- and that's right now, I mean, and the dates
3 get filled really quickly as you could imagine. The week of
4 May 12th, I'm available with the exception that I already
5 have a sentencing scheduled for the morning of the 14th.
6 Sometimes things happen and those things get adjourned. But
7 if need be, we can always, since it's a bench trial, we can
8 always continue in the afternoon and I would have the
9 Thursday available of that week. It's an in-custody person
10 so I really am loathe to move that.

11 MR. WALSH: Understood.

12 THE COURT: That time. And I do have, I'm
13 available the week of May 19th. Thursday of that week,
14 which is the 22nd, we may need to do the afternoon only.
15 And, again, I'm airing on the side of caution. If you need
16 more time given that it's a bench trial we have a little
17 more flexibility.

18 MR. BERNSTEIN: So we will make ourselves
19 available at any time the plaintiff is available and the
20 Court's available. I want to say that straight out so any
21 of these weeks work for us. I want to make -- maybe I
22 shouldn't but I want to make a proposal because your Honor
23 is correct that this is a bench trial. There is a lot of
24 evidentiary issues that both sides have brought up my
25 experience in bench trials judges don't want parties

1 fighting over evidentiary issues and most documents are
2 coming in.

3 THE COURT: Which is part of the reason I wanted
4 to do this by way of motion in limine so we could just, you
5 know, move through and not waste the witness's testimony
6 either.

7 MR. BERNSTEIN: I was going to suggest, I don't
8 think there is any hidden bodies here. I don't think there
9 is any documents that either side is worried about coming
10 into evidence. We all know what each side has to say, what
11 if we, you know, just let all the exhibits on the exhibit
12 list come in and let's keep the trial date and go forward
13 and not -- and maybe I should have made that proposal a
14 month ago to the plaintiff's counsel and I apologize for not
15 thinking about it until this moment but I'm sure that
16 McDonald's has spent a lot of time preparing already for the
17 trial in a few weeks. I know that we have, certainly, both
18 of our respective clients have; and so, you know, and I
19 think it's in everybody's interest to get this process done
20 as quickly as possible. And so, since we were unable to,
21 you know, go through mediation or just agree to put this
22 into the appraisal and higher the neutral finally, I would
23 just suggest that maybe that's a way to handle the situation
24 and keep the trial date.

25 THE COURT: I don't know what plaintiff's position

1 is but I think that we should proceed as we have discussed
2 at this point, okay? All right.

3 So you have three weeks to play with, okay? And
4 if you could let me know, I'll give you enough time to make
5 sure that you get to speak with your clients if you let me
6 know by, say, January 29th, is that enough time to give you
7 time to talk to your folks?

8 MR. WALSH: More than enough. Thank you.

9 THE COURT: Obviously, if you all come to an
10 agreement before that, but I'd like to know at least by then
11 so we can block off those dates and not put anything in
12 there in the interim, okay, that would be very helpful. I
13 said the 29th, great.

14 Is there anything else I can address with you all
15 today? I think we covered everything.

16 MR. BERNSTEIN: That's it, your Honor.

17 THE COURT: All right. Well, thank you all very
18 much. Thank you for waiting.

19 MR. BERNSTEIN: My apologies again, your Honor.

20 MR. WALSH: Likewise.

21 THE COURT: I'm always hopeful for the best moving
22 forward. Every day is a new day.

23 (WHEREUPON, this matter was concluded.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.



Anthony D. Frisolone, FAPR, RDR, CRR, CRI
Official Court Reporter

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EXHIBIT 2

From: Morris Missry
Sent: Monday, May 20, 2019 4:00 PM CDT
To: Meyer Michael
Subject: RE: 840 Atlantic Ave

We are in agreement with the appraisers appointing a third and they have apparently agreed to contact Mark Nakleh to see if he would act as the third appraiser. We strongly disagree with McDonald's interpretation as to the process, which is clear as day in the lease. I frankly don't know why you need another day or two to come to the conclusion that we discussed.

Morris Missry, Esq.
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From: Meyer Michael <Michael.Meyer@us.mcd.com>
Sent: Monday, May 20, 2019 3:56 PM
To: Morris Missry <MISSRY@wmlp.com>
Subject: FW: 840 Atlantic Ave

Hi Morris,

See below. The appraisers have agreed upon Mark Nakleh as a 3rd appraiser and Sharon is trying to get him appointed in order to comply with the prior agreement between the parties. Any assistance is appreciated.

Thanks,

Mike

From: Sharon Locatell
Sent: Monday, May 20, 2019 3:26 PM
To: tjtener@ktrfirst.com
Subject: 840 Atlantic Ave

Hi Tom,

I tried your office. Can you give me a call if you're able and we can get Marc appointed today. I believe the outside date is today, May 20, 2019.

Thanks
Sharon

You can try me on my cell after 4pm. 718-440-6766

Sharon Locatell, MAI, CRE, MRICS
President
Appraisers & Planners, Inc.
9 East 40th Street
New York, New York 10016

(phone) 212-683-1122
slocatell@appraiser-plan.com

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EXHIBIT 3

From: Morris Missry
Sent: Wednesday, July 10, 2019 4:05 PM CDT
To: Meyer Michael
Subject: RE: L_C 031-2093 Brooklyn NY_Letter [MCD-LEGAL_USA.FID962110]

Mike, I'm not following your revisions or logic. We all discussed allowing the appraisers exchange information including comps but not their respective Opinions. We would lie to keep it that way. Additionally, I don't know why you took out the "Settlement Discussions" language. Please explain. Lastly, I don't want to litigate any positions now. There is no reason to do that. The appraisers can exchange any information they choose and then we can have another discussion.

Morris Missry, Esq.
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-----Original Message-----

From: Meyer Michael <Michael.Meyer@us.mcd.com>
Sent: Wednesday, July 10, 2019 5:01 PM
To: Morris Missry <MISSRY@wmlp.com>
Subject: RE: L_C 031-2093 Brooklyn NY_Letter [MCD-LEGAL_USA.FID962110]

Morris,

As we've stated all along, we fully support having the appraisers talk further in the hopes that the parties can reach an agreement on the rent. However, the question of whether the existing ground lease should be taken into consideration is fundamental to the analysis, because it will dictate what comps and information will be included in the discussions. We do not consider this to be a complicated issue. In 936 Second Ave. LP v. Second Corporate Dev. Co, Inc., 10 N.Y.3d 628 (2008), the Court of Appeals of New York squarely held that "absent an agreement to the contrary, the effect of a net lease must be considered in valuing property for the purpose of setting rent for a renewal lease term. Such a rule comports with precedent, appraisal practices and common sense. If the parties to a lease desire to exclude that encumbrance in valuing the property, they only need to include language to that effect in their agreement." Because the Lease does not include any language to that effect, the Lease must be taken into consideration by the appraisers. If you disagree, we need to understand your position before we spend additional time and money on further discussions since it is likely that the appraisers will continue to talk past each other due to the absence of an agreement on this core issue. Let me know how you want to proceed.

Regarding the letter agreement, please see my proposed revisions attached - clean and redlined.

Thanks,

Mike

-----Original Message-----

From: Morris Missry <MISSRY@wmlp.com>
Sent: Monday, July 8, 2019 11:05 AM
To: Meyer Michael <Michael.Meyer@us.mcd.com>
Subject: RE: L_C 031-2093 Brooklyn NY_Letter Agreement(1081319.1) (002) Modified 07-02-19.doc

Ok thanks. I think we should get through this and let the appraisers do their thing which may obviate the need to go in other directions.

Morris Missry, Esq.
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-----Original Message-----

From: Meyer Michael <Michael.Meyer@us.mcd.com>
Sent: Monday, July 8, 2019 9:25 AM
To: Morris Missry <MISSRY@wmlp.com>
Subject: Re: L_C 031-2093 Brooklyn NY_Letter Agreement(1081319.1) (002) Modified 07-02-19.doc

Good morning Morris,

We are reviewing your proposed revisions. Hope to have something back in the next day or so. Any update on the case law research?

Thanks,

Mike

Sent from my iPhone

> On Jul 7, 2019, at 6:12 PM, Morris Missry <MISSRY@wmlp.com> wrote:

>

> Mike?

>

> Morris Missry, Esq.

> WACHTEL MISSRY LLP

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> Email: Missry@wmlp.com<mailto:Missry@wmlp.com>

> Website:

<https://nam02.safelinks.protection.outlook.com/?url=www.wmlp.com&data=02%7C01%7CMichael.Meyer%40us.mcd.com%7C240a953998704e5a3ca308d7057a4c73%7Cc05b8d5ab8834afbae93db5db239911c%7C0%7C0%7C636983895136761271&data=iK%2FrAWIhrxrVIWwqoynPxrEhKINnW%2FJ2tG7EdzPe2O0%3D&reserved=0><<https://nam02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.wmlp.com%2F&data=02%7C01%7CMichael.Meyer%40us.mcd.com%7C240a953998704e5a3ca308d7057a4c73%7Cc05b8d5ab8834afbae93db5db239911c%7C0%7C0%7C636983895136761271&data=JOnx8%2BjKQb04rEutHBWjM8GwzzQbIJz%2FMMXk2iamSME%3D&reserved=0>>

>

> On Jul 3, 2019, at 11:49 AM, Morris Missry <MISSRY@wmlp.com<mailto:MISSRY@wmlp.com>> wrote:

>

> Mike, please see my changes to the letter agreement. Let me know if these are ok. Thanks. Enjoy the Holiday weekend.

> <L_C 031-2093 Brooklyn NY_Letter Agreement(1081319.1) (002) Modified 07-02-19.doc>

>

>

>

>

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EXHIBIT 4

From: Morris Missry
Sent: Monday, July 22, 2019 9:45 AM CDT
To: Meyer Michael
Subject: RE: L_C 031-2093 Brooklyn NY_Letter [MCD-LEGAL_USA.FID962110]

Mike, would like to finalize the letter and take the next steps. Please get back to me. Thank you.

Morris Missry, Esq.
WACHTEL MISSRY LLP
One Dag Hammar skjold Plaza
885 Second Avenue | New York, NY 10017
Telephone: 212 909-9557 | Facsimile: 212 909-9448
Email: Missry@wmlp.com | Website: www.wmlp.com

From: Morris Missry <MISSRY@wmlp.com>
Sent: Tuesday, July 16, 2019 6:11 PM
To: Meyer Michael <Michael.Meyer@us.mcd.com>
Subject: Re: L_C 031-2093 Brooklyn NY_Letter [MCD-LEGAL_USA.FID962110]

Are we finalizing the letter?

Morris Missry, Esq.
WACHTEL MISSRY LLP
[One Dag Hammar skjold Plaza](#)
[885 Second Avenue | New York, NY 10017](#)
Telephone: [212 909-9557](tel:2129099557)
Facsimile: [212 909-9448](tel:2129099448)
Email: Missry@wmlp.com
Website: www.wmlp.com

On Jul 10, 2019, at 5:01 PM, Meyer Michael <Michael.Meyer@us.mcd.com> wrote:

Morris,

As we've stated all along, we fully support having the appraisers talk further in the hopes that the parties can reach an agreement on the rent. However, the question of whether the existing ground lease should be taken into consideration is fundamental to the analysis, because it will dictate what comps and information will be included in the discussions. We do not consider this to be a complicated issue. In 936 Second Ave. LP v. Second Corporate Dev. Co, Inc., 10 N.Y.3d 628 (2008), the Court of Appeals of New York squarely held that "absent an agreement to the contrary, the effect of a net lease must be considered in valuing property for the purpose of setting rent for a renewal lease term. Such a rule comports with precedent, appraisal practices and common sense. If the parties to a lease desire to exclude that encumbrance in valuing the property, they only need to include language to that effect in their agreement." Because the Lease does not include any language to that effect, the Lease must be taken into consideration by the appraisers. If you disagree, we need to understand your position before we spend additional time and money on further discussions since it is likely that the appraisers will continue to talk past each other due to the absence of an agreement on this core issue. Let me know how you want to proceed.

Regarding the letter agreement, please see my proposed revisions attached - clean and redlined.

Thanks,

Mike

-----Original Message-----

From: Morris Missry <MISSRY@wmllp.com>

Sent: Monday, July 8, 2019 11:05 AM

To: Meyer Michael <Michael.Meyer@us.mcd.com>

Subject: RE: L_C 031-2093 Brooklyn NY_Letter Agreement(1081319.1) (002) Modified 07-02-19.doc

Ok thanks. I think we should get through this and let the appraisers do their thing which may obviate the need to go in other directions.

Morris Missry, Esq.

WACHTEL MISSRY LLP

One Dag Hammarskjold Plaza

885 Second Avenue | New York, NY 10017

Telephone: 212 909-9557 | Facsimile: 212 909-9448

Email: Missry@wmllp.com | Website:

<https://nam02.safelinks.protection.outlook.com/?url=www.wmllp.com&data=02%7C01%7CMichael.Meyer%40us.mcd.com%7C397e730f2ad2410a9fbc08d703bdfdd%7Cc05b8d5ab8834afbae93db5db239911c%7C0%7C0%7C636981986946551443&sdata=DaXBavNOIz6LQXTLxLIS%2FhdMvSI%2FG3IGgN%2FrfsIvIU%3D&reserved=0>

-----Original Message-----

From: Meyer Michael <Michael.Meyer@us.mcd.com>

Sent: Monday, July 8, 2019 9:25 AM

To: Morris Missry <MISSRY@wmllp.com>

Subject: Re: L_C 031-2093 Brooklyn NY_Letter Agreement(1081319.1) (002) Modified 07-02-19.doc

Good morning Morris,

We are reviewing your proposed revisions. Hope to have something back in the next day or so. Any update on the case law research?

Thanks,

Mike

Sent from my iPhone

On Jul 7, 2019, at 6:12 PM, Morris Missry <MISSRY@wmlp.com> wrote:

Mike?

Morris Missry, Esq.

WACHTEL MISSRY LLP

One Dag Hammarskjold Plaza<x-apple-data-detectors://3/2>

885 Second Avenue | New York, NY 10017<x-apple-data-detectors://3/2>

Telephone: 212 909-9557<<tel:212%20909-9557>>

Facsimile: 212 909-9448<<tel:212%20909-9448>>

Email: Missry@wmlp.com<<mailto:Missry@wmlp.com>>

Website:

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On Jul 3, 2019, at 11:49 AM, Morris Missry <MISSRY@wmlp.com<<mailto:MISSRY@wmlp.com>>> wrote:

Mike, please see my changes to the letter agreement. Let me know if these are ok. Thanks.
Enjoy the Holiday weekend.

<L_C 031-2093 Brooklyn NY_Letter Agreement(1081319.1) (002) Modified 07-02-19.doc>

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<L_C 031-2093 Brooklyn NY_Letter Agreement REDLINE 7.10.19(1401305.1).pdf>

<L_C 031-2093 Brooklyn, NY_Letter Agreement(1081319.4).doc>

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EXHIBIT 5

From: Morris Missry
Sent: Tuesday, September 24, 2019 8:27 AM CDT
To: Meyer Michael
Subject:

Mike, I know that Sharon and Tom are setting up a call or meeting to share and discuss their results. I wanted to discuss retaining the third appraiser with you and get him signed up. Are you available later today for a call?

Morris Missry, Esq.
WACHTEL MISSRY LLP
One Dag Hammarskjold Plaza
885 Second Avenue | New York, NY 10017
Telephone: 212 909-9557
Facsimile: 212 909-9448
Email: Missry@wmlp.com
Website: www.wmlp.com

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EXHIBIT 6

From: benjamin.joelson@akerman.com
To: [Denise Alvarez](#)
Cc: joshua.bernstein@akerman.com; tara.raghavan@akerman.com; [Brendan M. Walsh](#); kathleen.prystowsky@akerman.com; elizabeth.puccio-williams@akerman.com
Subject: RE: McDonald's v. Vanderbilt -- Trial Exhibits Follow Up
Date: Wednesday, January 22, 2025 12:36:29 PM

EXTERNAL: This email originated from outside of the organization.

Denise,

We have reviewed the nine exhibits that McDonald's identified in the second footnote of its January 7, 2025 letter to the Court and we determined that we will not be seeking to admit those documents under the adoptive admissions exception to the hearsay rule.

However, the majority of these documents are admissible as party opponent statements. Specifically, Exhibits V, Y, VV, WW, and XX are squarely admissions by McDonald's or its agents. Further, these documents may be used for purposes of impeachment and to demonstrate the analysis considered by McDonald's appraiser. In short, there are numerous bases for the admission and/or use of these documents.

As to Exhibits KK, AAA, BBB, and OOO, these may be used to demonstrate that Vanderbilt was diligently pursuing the process under the ORA and seeking to move the rent reset process forward. They may also be used to show that Vanderbilt was relying on the advice and expertise of its counsel in the process. Thus, the emails from Morris Missry in these exhibits are not being used for the truth of the matter asserted, but to demonstrate Mr. Missry's role and input throughout the ORA process. These documents may also be used for purposes of impeachment.

In sum, there are numerous admissible bases for all of the documents that you referenced in footnote 2 of your January 7th letter to court. We hope that this correspondence and the upcoming conference this Thursday resolves these issues.

Thank you.

Benjamin R. Joelson

Partner

Akerman LLP | 1251 Avenue of the Americas, 37th Floor | New York, NY 10020

D: 212 880 3815 | T: 212 880 3800 | F: 212 880 8965

benjamin.joelson@akerman.com

From: Denise Alvarez <DAvarez@pashmanstein.com>

Sent: Saturday, January 18, 2025 7:49 AM

To: Joelson, Benjamin (Ptnr-NY) <benjamin.joelson@akerman.com>

Cc: Bernstein, Joshua (Ptnr-NY) <joshua.bernstein@akerman.com>; Raghavan, Tara (Ptnr-NY) <tara.raghavan@akerman.com>; Brendan M. Walsh <BWalsh@pashmanstein.com>; Prystowsky, Kathleen (Ptnr-NY) <kathleen.prystowsky@akerman.com>; Puccio-Williams, Elizabeth (Assoc-NY) <elizabeth.puccio-williams@akerman.com>

Subject: Re: McDonald's v. Vanderbilt -- Trial Exhibits Follow Up

[External to Akerman]

Yes, I will

On Jan 17, 2025, at 7:29 PM, benjamin.joelson@akerman.com wrote:

EXTERNAL: This email originated from outside of the organization.

Will you be sending a Zoom invite?

Benjamin R. Joelson

Partner

Akerman LLP | 1251 Avenue of the Americas, 37th Floor | New York, NY 10020

D: 212 880 3815 | T: 212 880 3800 | F: 212 880 8965

benjamin.joelson@akerman.com

Denise Alvarez

Partner

Pashman Stein Walder Hayden, P.C.

201.270.4946 Direct

dalvarez@pashmanstein.com

From: Denise Alvarez <DAlvarez@pashmanstein.com>

Sent: Friday, January 17, 2025 3:43 PM

To: Joelson, Benjamin (Ptnr-NY) <benjamin.joelson@akerman.com>; Bernstein, Joshua (Ptnr-NY) <joshua.bernstein@akerman.com>; Raghavan, Tara (Ptnr-NY) <tara.raghavan@akerman.com>

Cc: Brendan M. Walsh <BWalsh@pashmanstein.com>; Prystowsky, Kathleen (Ptnr-NY) <kathleen.prystowsky@akerman.com>; Puccio-Williams, Elizabeth (Assoc-NY) <elizabeth.puccio-williams@akerman.com>

Subject: RE: McDonald's v. Vanderbilt -- Trial Exhibits Follow Up

[External to Akerman]

Benjamin:

I confirm that we will not be filing a statement of elements/defenses/facts today, as you discussed with Brendan earlier. We suggest that we convene by Zoom on Thursday at 1pm, but it's pertinent that we hear from you about which exhibits you contend are admissions by silence by 5pm on Wednesday so that we can be prepared for that meeting.

As for the trial dates, we should have confirmation from our witnesses on their availability very soon and will confer with you before submitting a letter to the Court.

Thanks

Denise

Denise Alvarez

Partner

Pashman Stein Walder Hayden, P.C.

201.270.4946 Direct

dalvarez@pashmanstein.com

From: benjamin.joelson@akerman.com <benjamin.joelson@akerman.com>

Sent: Friday, January 17, 2025 3:22 PM

To: Denise Alvarez <DAlvarez@pashmanstein.com>; joshua.bernstein@akerman.com; tara.raghavan@akerman.com

Cc: Brendan M. Walsh <BWalsh@pashmanstein.com>; kathleen.prystowsky@akerman.com; elizabeth.puccio-williams@akerman.com

Subject: RE: McDonald's v. Vanderbilt -- Trial Exhibits Follow Up

EXTERNAL: This email originated from outside of the organization.

Denise,

Please make sure that my colleagues Kathleen and Elizabeth are copied on all communications in this case.

We can make ourselves available Thursday or Friday at 1 p.m. to discuss the exhibits issues. Let us know if either works.

Also, this will confirm our conversation from earlier where we agreed that neither of us will be filing today the statement of elements/defenses/facts required by Judge Irizarry's rules in light of the adjournment of the trial, and that the deadlines for the various filings/exchanges in her rules will be tied to the new trial date once assigned.

On that note, as I said in my email on Wednesday, we did not realize that there is a Jewish holiday in May which may conflict with a couple of the dates proposed by the judge. So we would appreciate if we could all confer about dates after you've had a chance to speak with your client/witnesses and then we can submit a joint letter to the Court regarding the trial date.

Thanks.

Benjamin R. Joelson

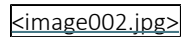
Partner

Akerman LLP | 1251 Avenue of the Americas, 37th Floor | New York, NY 10020

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benjamin.joelson@akerman.com

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From: Denise Alvarez <DAvarez@pashmanstein.com>

Sent: Friday, January 17, 2025 1:04 PM

To: Bernstein, Joshua (Ptrn-NY) <joshua.bernstein@akerman.com>; Joelson, Benjamin (Ptrn-NY) <benjamin.joelson@akerman.com>; Raghavan, Tara (Ptrn-NY) <tara.raghavan@akerman.com>

Cc: Brendan M. Walsh <BWalsh@pashmanstein.com>

Subject: McDonald's v. Vanderbilt -- Trial Exhibits Follow Up

[External to Akerman]

Counsel:

As we discussed after the pre-trial conference on Wednesday, we would like to reach agreement as to some of the trial exhibits in an attempt to avoid motion practice. To do so, we need to understand which exhibits Vanderbilt is seeking to admit as admissions by silence/adoptive admissions. As noted in your letter to the Court dated January 10, 2025, it is Vanderbilt's position that many of the exhibits are admissible on other grounds, and not as adoptive admissions. Thus, in order to resolve this, we need to know which ones you contend are adoptive admissions. Please provide us with a list of such exhibits by close of business on Wednesday, January 22.

In addition, please let us know your availability for a call next Thursday or Friday to discuss this issue as well as the pleadings issue. Thank you.

Regards,
Denise

Denise Alvarez

Partner

Pashman Stein Walder Hayden, P.C.

201.270.4946 Direct

dalvarez@pashmanstein.com

Court Plaza South, 21 Main Street, Suite 200, Hackensack, NJ 07601

201.488.8200 | 201.488.5556 Fax | pashmanstein.com

<image003.png>